

Ozone Transport

ISSUE SUMMARY:

Interstate air pollution transport (“transport”) refers to pollution from upwind emissions sources that impact the air quality in a different state(s) downwind. Certain types of pollutants, such as sulfur dioxide (SO₂) and nitrogen oxides (NO_x), can affect air quality and public health both locally and regionally. The transport of these pollutants across state borders can make it difficult for downwind states to meet the National Ambient Air Quality Standards (NAAQS) for fine Particulate Matter (PM_{2.5}) and ozone (O₃).

UPCOMING MILESTONES:

- **March 8, 2021**—Clean Air Act Section (CAA) 184(c) deadline for EPA to act on an Ozone Transport Commission (OTC) recommendation submitted on June 8, 2020.
- **March 15, 2021**—Court-ordered deadline to finalize a rulemaking that addresses the remand of the Cross State Air Pollution Rule (CSAPR) Update, as outlined in the D.C. Circuit Decision *Wisconsin v. EPA*.
 - **May 2021** – Required emissions reductions scheduled to begin; 2021 ozone season (May – September)

BACKGROUND:

- **Ozone Transport Commission CAA Section 184(c) Recommendation:**
 - On June 8, 2020, the OTC submitted a recommendation to EPA for additional control measures at certain coal-fired electricity generating units (EGUs) in Pennsylvania, by revising its State Implementation Plan (SIP) to establish daily NO_x emissions limits for all coal-fired EGUs with already-installed controls (selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR)). The OTC recommendation focuses on ensuring optimization of these controls to minimize NO_x emissions each day of the ozone season.
 - Established by the CAA, the OTC is made up of Connecticut, Delaware, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, the District of Columbia, and the portion of Virginia that is within the Consolidated Metropolitan Statistical Area that includes the District of Columbia.
 - Section 184(c) allows the OTC to develop and submit recommendations to EPA, through a majority vote of its members, for additional control measures for all or a part of the ozone transport region (OTR) if the OTC determines that such measures are necessary to bring any area in the OTR into attainment for ozone by the applicable attainment deadlines.
 - Section 184(c) has procedures for EPA to follow in responding to OTC recommendations including: publishing a *Federal Register* notice stating that the recommendations are available, providing an opportunity for a public hearing, consulting with members of the OTC, and to consider the data, views, and comments received pursuant to the public hearing.
 - The provisions give EPA nine months to approve, disapprove, or partially approve and partially disapprove the recommendations.
 - For an approval or partial approval, EPA would issue a finding under section 110(k)(5) that the SIP for Pennsylvania is inadequate to meet the requirements of section 110(a)(2)(D); i.e., a “SIP call” giving them one year to revise the SIP to include the approved additional control measures.

- Any disapproval, full or partial, must include EPA's recommendations concerning equal or more effective actions that the OTC could take to ensure that the disapproved portion of the recommendations conforms to the requirements of section 184.
- **Revised CSAPR Update rule:**
 - In October 2016, EPA promulgated the CSAPR Update to partially address interstate transport for the 2008 ozone NAAQS (set at 75 ppb) in the eastern United States through 22 federal implementation plans which required emissions reductions from electric generating units ("EGUs") via a NO_x emissions trading program.
 - In the CSAPR Update, EPA could not conclude that the rule fully addressed the transport obligations for 21 of the 22 CSAPR Update states. As a result, EPA acknowledged that it had an outstanding obligation to finish its determination in a subsequent rulemaking.
 - To address EPA's remaining obligation, the Agency promulgated the CSAPR Close-Out in December 2018. Based on EPA's analysis, the Agency determined that by 2023, the CSAPR Update would fully address the transport obligations for the 2008 ozone NAAQS for the affected states and no further emissions reductions, beyond those required in the CSAPR Update, were needed.
 - In September 2019, the D.C. Circuit remanded the CSAPR Update to the extent that it was partial in nature and did not eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by the downwind states' next applicable attainment date, which was 2018 (for Moderate nonattainment areas) at the time CSAPR Update was promulgated (*Wisconsin v. EPA*). The CSAPR Update NO_x emissions trading program remained in place. Other key principles in the court decision include:
 - EPA must make a showing of "impossibility" to justify any delay in fully addressing transport obligations by the next applicable attainment date.
 - EPA cannot rely on uncertainty regarding non-electric generating units (non-EGUs) NO_x mitigation potential to avoid the statutory mandate to eliminate significant contribution unless it is "so profound that it precludes EPA from making a reasoned judgment."
 - In October 2019, a separate panel of the D.C. Circuit vacated the CSAPR Close-Out for failing to analyze and resolve significant contribution by 2021, "the next applicable attainment date," or demonstrating that such reductions were impossible, in accordance with *Wisconsin v. EPA* (*New York v. EPA*).
 - In a subsequent deadline-suit in S.D.N.Y., EPA was placed on a court-ordered deadline of March 15, 2021 to sign a notice of final rulemaking that is responsive to the remand of the CSAPR Update (and addresses outstanding obligations after the vacatur of the CSAPR Close-Out). A separate deadline-suit in the D.D.C. was stayed until March 15, 2021.
 - In fall 2020, EPA signed a notice of proposed rulemaking (the Revised CSAPR Update).
 - The proposed rulemaking addresses 21 upwind states' remaining transport obligations for the 2008 ozone NAAQS.
 - Per the *Wisconsin* decision, EPA aligned its analysis and the implementation of emissions reductions required to eliminate significant contribution with the next applicable attainment date; the Revised CSAPR Update's NO_x emissions reductions begin with the 2021 ozone season (May – September), which corresponds to the July 20, 2021, Serious area attainment date for the 2008 ozone NAAQS.
 - Based on updated air quality modeling first published with the proposal, EPA proposed additional NO_x emissions reductions from EGUs in 12 upwind states that were determined to have remaining transport obligations (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia), but no additional NO_x emissions budgets in 9 other states which will remain in the trading program established in the CSAPR Update.
 - To implement the required NO_x emissions reductions from EGUs, EPA proposed to revise its existing

NO_x emissions trading program in which all affected EGUs already participate.

- EPA did not propose emissions reductions from non-EGUs; however, in the proposed rule EPA stated “To develop a more complete record, EPA requests comment on a number of questions related to specific control strategies we evaluated, and in particular seeks feedback and data from stakeholders with relevant expertise or knowledge. Should such additional information and analyses show that emission reductions from non-EGU sources in the linked upwind states would be more cost-effective than what is included in the EPA’s current assessment, available for installation earlier than the EPA estimates, or more impactful on downwind air quality than the EPA’s current information suggests, then the Agency remains open to the possibility of finalizing a rule requiring such controls as may be justified.”

KEY EXTERNAL STAKEHOLDERS:

☐ Congress ☒ Industry ☒ States ☐ Tribes ☐ Media ☐ Other Federal Agency
☒ NGO ☐ Local Government ☐ Other: _____

Key concern(s):

OTC Section 184(c) Recommendation: OTC states the recommendation would be withdrawn if Pennsylvania satisfactorily completes its current rulemaking efforts to adopt daily NO_x limits for EGUs. Pennsylvania has a relatively long rulemaking process that is in its early stages. The State’s rulemaking plans are affected by a recent court ruling on EPA’s approval of Pennsylvania’s last efforts to regulate EGUs. *Sierra Club v. EPA*, 972 F.3d 290 (3d. Cir.2020).

Revised CSAPR Update: During the S.D.N.Y. deadline-suit litigation, EPA argued for an additional year beyond March 2021 to address non-EGUs due to known gaps and uncertainties in EPA’s data. However, EPA was unsuccessful in its argument and placed on a March 15, 2021, court-ordered deadline to fully address the *Wisconsin* decision (addressing both EGUs and non-EGUs). As such, EPA’s non-EGU analysis and subsequent determination to not propose controls on non-EGUs may be subject to future legal challenges.

MOVING FORWARD:

OTC Section 184(c) Recommendation: To meet the March 8, 2021 statutory deadline, EPA should hold a public hearing pursuant to CAA 184(c)(2)(A) in advance of signing the final determination by March 8, 2021.

Revised CSAPR Update: To meet the March 15, 2021 court-ordered deadline, EPA should submit the final rulemaking for 30-day interagency review to the Office of Management and Budget (OMB) by February 1, 2021, or as soon as possible thereafter.

LEAD OFFICE/REGION: OAR

OTHER KEY OFFICES/REGIONS: OGC; REGIONS 1-6